

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ALLEN ROUSE,

Defendant-Appellant.

FOR PUBLICATION

November 2, 2006

9:00 a.m.

No. 262417

Dickinson Circuit Court

LC No. 04-003271-FH

Official Reported Version

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. Late in the afternoon of the second day of deliberations, the jury informed the trial court that it was at an impasse. The trial court observed that no rule dictated how long the jury would be allowed to deliberate, but noted that if the jury could not reach a verdict, another trial would be required. The trial court then commented that no juror should change his or her views solely for the sake of reaching a verdict and read CJI2d 3.12, the deadlocked-jury instruction. The jury deliberated for an additional five hours after being instructed to continue deliberating. The jury convicted defendant of two counts of second-degree criminal sexual conduct, MCL 750.520c.

In *People v Sullivan*, 392 Mich 324, 335, 341-342; 220 NW2d 441 (1974), our Supreme Court adopted American Bar Association (ABA) Standard 5.4 for the instruction that should be read to a deadlocked jury. The *Sullivan* Court held that any substantial departure from that instruction would constitute error requiring reversal. *Id.* at 342. CJI2d 3.12 is based on ABA Standard 5.4.

Before reading CJI2d 3.12 to the jury, the trial court advised the jury that if it did not reach a verdict, a new trial would be required. However, immediately thereafter the trial court emphasized that no juror should change his or her honest beliefs simply for the sake of reaching a verdict. The trial court then read CJI2d 3.12, which also cautions that a juror should not relinquish his or her honest beliefs simply to reach a verdict. Contrary to defendant's assertion, the jury did not return its verdict shortly after hearing these instructions. Instead, the jury deliberated for approximately five more hours. During this time span, the jury responded to an inquiry from the trial court by indicating that it wished to continue deliberating.

The trial court's remarks did not appeal to the jury's sense of civic duty and did not suggest a failure of purpose. *People v Hardin*, 421 Mich 296, 316; 365 NW2d 101 (1984). Nor

did the trial court's remarks coerce the jurors by informing them that they were *required* to reach a verdict. Quite simply, the trial court's statement that another trial would be necessary if the jury could not reach a verdict did not suggest that the jury should take a different approach to its deliberations. Accordingly, the remarks did not constitute a substantial departure from the instruction mandated by *Sullivan*. *People v Johnson*, 112 Mich App 41, 48; 314 NW2d 794 (1981) (holding that "the court's mention of the possibility of a successor jury was not a departure from the proper instruction mandated in *Sullivan*"); see also *People v Pollick*, 448 Mich 376, 380-388; 531 NW2d 159 (1995); *Hardin*, *supra* at 317-318.

Because the jury instructions given in this case were not improperly coercive, and because they did not substantially depart from CJI2d 3.12, I would affirm.

/s/ Kathleen Jansen